



National Labor Relations Board

Weekly Summary of NLRB Cases

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DPI New England (1-CA-44833; 354 NLRB No. 94) Canton, MA, Oct. 30, 2009. The Board adopted the administrative law judge's finding that Respondent violated Section 8(a)(3) and (1) of the Act by suspending and discharging employee Derek Mace, but reversed his finding that Respondent violated 8(a)(3) and (1) by imposing a new Class A licensing requirement and discharging employees Alexander Adorno, Roger Beattie, and Anthony Glover pursuant to that requirement. [\[HTML\]](#) [\[PDF\]](#)

In affirming the Mace violation, the Board found it unnecessary to rely on the judge's application of *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964). Instead, the Board applied *Cal Spas*, 322 NLRB 41, 56 (1996), *enfd.* in relevant part 150 F.3d 1095 (9th Cir. 1998) and found that because Respondent did not prove that Mace's organizing activities actually interfered with or disrupted either Mace's work or that of other employees, Respondent's suspension and discharge of Mace for engaging in organizing activities during work time violated Section 8(a)(3) and (1).

In concluding that Respondent did not violate the Act by imposing the Class A licensing requirement and discharging Adorno, Beattie, and Glover, the Board found, contrary to the judge, that Respondent proved that it would have imposed its Class A licensing requirement and discharged the employees for legitimate business reasons even in the absence of union activity. The Board found unwarranted the judge's inference that Respondent established an "extremely short deadline" for upgrading to a Class A license so that "the drivers would almost certainly fail to meet it." In so finding, the Board relied on the wording of the written notice, which offered the drivers substantial assistance in obtaining their Class A licenses, as well as the fact that Respondent offered the three employees a position in the warehouse, even though Respondent knew, by that time, that the Union was attempting to organize the warehouse employees in addition to the drivers. Member Schaumber also relied on a statement made to the employees that if they got their Class A licenses, "they were more than welcome to come in and reapply." Member Schaumber found this statement "not indicative of an intent to rid the workplace of union supporters." In view of all the facts, the Board was "not persuaded that the Respondent established a Class A license requirement that would affect several employees, in the hope that one union activist, Beattie, would be unable to meet it and so provide the Respondent with a justification for his discharge." The Board found that Respondent met its burden of showing that the Class A license requirement was established in July for legitimate business reasons, i.e., the recent and anticipated increases in cargo volume.

(Chairman Liebman and Member Schaumber participated.)

Charge filed by Teamsters Local 25; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Boston, Feb. 9-11, 2009. Adm. Law Judge Paul Bogas issued his decision May 29, 2009.

Leiferman Enterprises, LLC d/b/a Harmon Auto Glass and its successor Auto Glass Repair and Windshield Replacement Service, Inc. (18-CA-18134; 354 NLRB No. 98) Minneapolis, MN, Oct. 30, 2009. The Board affirmed the administrative law judge's supplemental decision ordering Respondent Windshield Replacement Service, Inc. to pay a total of \$54,518.25 in backpay to 15 claimants. [\[HTML\]](#) [\[PDF\]](#)

Based on a stipulated record, the judge found that Respondent Windshield Replacement Service is derivatively liable under *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973), for the unfair labor practices of Respondent Harmon Auto Glass reported at 352 NLRB 152 (2008). The judge further found that Respondent Windshield Replacement Service's liability was not extinguished by its purchase of Harmon Auto Glass's assets "free and clear of any liens and encumbrances" at a judicial sale arising out of an involuntary liquidation proceeding in State court.

Member Schaumber noted that he did not participate in *International Technical Products*, 249 NLRB 1301 (1980), cited by the judge, and he does not pass on whether it was correctly decided. However, he recognizes that it is current Board law, and he applies it in adopting the judge's supplemental decision.

(Chairman Liebman and Member Schaumber participated.)

Adm. Law Judge Robert A. Giannasi issued his supplemental decision June 26, 2009.

Fortuna Enterprises L.P., A Delaware Limited Partnership d/b/a/ The Los Angeles Airport Hilton Hotel and Towers (31-CA-27837, et al.; 354 NLRB No. 95) Los Angeles, CA, Oct. 29, 2009. The Board affirmed the administrative law judge's finding on remand. The Board, in 354 NLRB No. 17 (2009), severed and remanded to the judge for further findings and analysis the issue of whether the Respondent's supervisor violated Section 8(a)(1) of the Act by physically pushing three employees away from employees engaged in protected concerted activity and by pushing his finger into the chest of a fourth employee when he protested the supervisor's conduct. In his supplemental decision, the judge again found that the supervisor's conduct was unlawful. [\[HTML\]](#) [\[PDF\]](#)

In affirming the judge's finding, the Board found that the supervisor unlawfully pushed one of the employees and found it unnecessary to pass on whether the supervisor also engaged in similar unlawful physical conduct with the other employees. The finding that the pushing was coercive was bolstered by the Board's finding in its prior decision that the same supervisor violated Section 8(a)(1) shortly after this incident by threatening physical harm to the same employee if he engaged in protected concerted activity. The Board further expressed no opinion as to whether an 8(a)(1) violation would have been found if the supervisor had merely orally directed the employees to return to work and they had failed to do so.

(Chairman Liebman and Member Schaumber participated.)

Adm. Law Judge John J. McCarrick issued his supplemental decision July 22, 2009.

Signman, Inc., and its alter ego Jay's Sign Co., Inc., d/b/a Jay's Sign Services and Jay's Sign Co. Inc. d/b/a Jay's Sign Services and Jay Jolley (25-CA-28650; 354 NLRB No. 96) Indianapolis, IN, Oct. 29, 2009. The Board granted the General Counsel's request for default judgment against Respondents Signman and Jay's Sign for their failure to answer the amended compliance specification. The Board noted that Jay's Sign admitted in its bankruptcy case that it was the alter ego of, and *Golden State* successor to, Respondent Signman and liable to remedy the unfair labor practices adjudicated against Signman. The Board also noted that although Respondents Signman and Jay's Sign were in bankruptcy, it is well established that the institution of bankruptcy proceeding does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. The Board cited *Cardinal Services*, 295 NLRB 933, fn. 2 (1989). The Board ordered the Respondents Signman and Jay's Sign to pay the backpay due the discriminatee and the contributions due to the specified fringe benefit funds as stated in the amended compliance specification. [\[HTML\]](#) [\[PDF\]](#)

The Board denied the General Counsel's request for default judgment against Respondent Jolley. The Board found that the allegations of the amended compliance specification did not set forth a sufficiently clear or specific factual basis to support a finding of personal liability under a veil-piercing theory. The Board cited *White Oak Coal*, 318 NLRB 732 (1995), enfd. mem. 81 F.3d 150 (4th Cir. 1996). The Board remanded the issue of personal liability to the Regional Director for further amendment of the compliance specification or a hearing.

(Chairman Liebman and Member Schaumber participated.)

Southwest Regional Council of Carpenters Local 1780 (28-CD-272; 354 NLRB No. 101) Las Vegas, NV, Oct. 30, 2009. This case involved a jurisdictional dispute between Carpenters Local 1780 and Teamsters Local 631 over certain installation and dismantling work (I & D work) performed by the Employer, Image Exhibit Services, Inc. (Image), at trade shows and conventions in Las Vegas. The Board weighed the relevant factors and awarded the disputed work to Carpenters. [\[HTML\]](#) [\[PDF\]](#)

The majority of I & D work in Las Vegas is governed by a Master Agreement signed by Teamsters Local 631 and GES Exposition Services, Inc., a large general contractor in the industry. Under the Master Agreement, GES agreed to use Teamsters-represented employees for its exhibits and shows. In Oct. 1997, Image signed a Short Form Agreement with Local 631 making it subject to the provisions of the Master Agreement. Image was not a signatory to the Master Agreement.

Image claimed (and Teamsters denied) that, based on certain conduct by Teamsters in 2006 and 2007, the Employer was no longer bound by its Short Form Agreement with Teamsters. On Sept. 28, 2007, Image entered into a primary contract with Carpenters covering its I & D work in Las Vegas. Thus, both Teamsters and Carpenters claimed the work in dispute based on primary contracts with Image.

The Board considered the relevant jurisdictional-dispute factors and awarded the work to Carpenters based on factors of employer preference, current assignment, relative skills, and economy and efficiency of operations.

(Chairman Liebman and Member Schaumber participated.)

Starbucks Corp. d/b/a Starbucks Coffee Co. (2-CA-37548, et al.; 354 NLRB No. 99) New York, NY, Oct. 30, 2009. The Board adopted the administrative law judge's conclusion that the Respondent violated Section 8(a)(1) of the Act by implementing and enforcing a rule discriminatorily prohibiting employees from wearing more than one prounion button at a time. It also adopted, for the reasons stated by the judge, that the Respondent violated Section 8(a)(3) and (1) by discharging baristas Joseph J. Agins, Jr. and Daniel Gross and by issuing discriminatory disciplinary performance evaluations to Gross. Each Board member included a personal footnote with respect to Agins' discharge and Member Schaumber issued a personal footnote with the respect to Gross' discharge. [\[HTML\]](#) [\[PDF\]](#)

The Board also adopted, in the absence of exceptions, the judge's findings that the Respondent violated Section 8(a)(1) by prohibiting employees from discussing the Union while off duty; discriminatorily prohibiting employees at the Respondent's Union Square East store from using a company bulletin board to post items of a non-work nature including materials relating to the Union, and from entering the back of the store; promulgating and maintaining a rule prohibiting employees from talking about the Union while allowing other non-work related discussions; and promulgating and maintaining a rule prohibiting employees from talking about terms and conditions of employment. Also in the absence of exceptions the Board adopted the judge's findings that the Respondent violated Section 8(a)(3) and (1) by disciplining employee Tomer Malchi pursuant to its unlawful rule prohibiting employees from talking about the Union while allowing other non-work related discussions; discriminatorily preventing Malchi from working shifts at other Starbucks locations; and issuing a written warning to employee Daniel Gross on Aug. 5, 2006. Finally, in the absence of exceptions the Board adopted the judge's dismissal of allegations that the Respondent disparately enforced its dress code against employees Sulay Ayala and Tomer Malchi and unlawfully interrogated employee Isis Saenz.

The Board reversed the judge's finding that the Respondent violated Section 8(a)(3) and (1) by discharging employee Isis Saenz for participating with a group of people who followed a regional vice president at night after a Union rally, shouting threats, taunts, and profane comments at him. The Board applied *Atlantic Steel*, 245 NLRB 814 (1979) to find, contrary to the judge, that the place, the nature of the misconduct, and the lack of provocation weighed against finding that Saenz retained the Act's protection.

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Industrial Workers of the World Local 660, complaint alleged violations of Section 8(a)(1) and (3). Hearing at New York, over the course of 20 days between July 9 and Oct. 25, 2007. Adm. Law Judge Mindy E. Landow issued her decision Dec. 19, 2008.

DECISION OF ADMINISTRATIVE LAW JUDGE

Laborers Local 1075 and Michigan Laborers' District Council (McCarthy & Smith, Inc.)
Marysville, MI, Oct. 29, 2009, 7-CC-1831, 1832, JD-50-09, Judge Ira Sandron

NO ANSWER TO COMPLAINT

(In the following cases, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

APS Events, LLC (Theatrical Stage Employees Local 19) (5-CA-34875; 354 NLRB No. 102)
Glen Burnie, MD, Oct. 30, 2009 [\[HTML\]](#) [\[PDF\]](#)

Hartzheim Dodge, Inc. (Machinist District Lodge 190 and Local 1101) (32-CA-24548;
354 NLRB No. 100) San Jose, CA, Oct. 30, 2009 [\[HTML\]](#) [\[PDF\]](#)

NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to compliance specification.)

N & R Quality Care, LLC (an Individual) (5-CA-34079; 354 NLRB No. 97) Fredericksburg, VA,
Oct. 30, 2009 [\[HTML\]](#) [\[PDF\]](#)

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following case, the Board considered exceptions to the Report of the Hearing Officer.)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Markfest, Inc., Marshfield, WI, 30-RD-1510, Oct. 28, 2009 (Chairman Liebman and
Member Schaumber)

*(In the following case, the Board adopted Report of
Hearing Officer in the absence of exceptions)*

DECISION AND DIRECTION [that Regional Director open and count ballots]

Iron Mountain Information Management, Inc., Landover, MD, 5-RC-16310, Oct. 26, 2009
